

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH AND GAME

Call to Order: By **CHAIRMAN KEN MESAROS**, on March 9, 1999 at 3:15 P.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Ken Mesaros, Chairman (R)
Sen. Mike Taylor, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Al Bishop (R)
Sen. William Crismore (R)
Sen. Steve Doherty (D)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Eve Franklin (D)
Sen. Bea McCarthy (D)
Sen. Chuck Swysgood (R)
Sen. Jack Wells (R)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Adrienne Pillatzke, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 435, 3/9/1999; HB 488,
3/9/1999; HB 533, 3/9/1999; HB
534, 3/9/1999
Executive Action: HB 215; HB 344; HB 379

EXECUTIVE ACTION ON HB 215

Leanne Kurtz entered amendment HB021501.alk, **EXHIBIT(fis53a01)**, and amendment HB021502.ads, **EXHIBIT(fis53a02)**.

Motion: SEN. WELLS moved that AMENDMENT HB021501.ALK BE ADOPTED.

Discussion:

SENATOR WELLS explained the amendment.

Vote: Motion carried unanimously.

Motion/Vote: SEN. BECK moved that AMENDMENT HB021502.ADS BE ADOPTED. Motion carried unanimously.

Motion/Vote: SEN. MCCARTHY moved that HB 215 BE CONCURRED IN AS AMENDED. Motion carried 10-2 with Bishop and Swysgood voting no.

{Tape : 1; Side : A; Approx. Time Counter : 3.3}

EXECUTIVE ACTION ON HB 344

Motion: SEN. TAYLOR moved that HB 344 BE CONCURRED IN.

Discussion:

SENATOR BISHOP asked if the price of property will go up even if the fishery value was not valuable. **Arnie Olsen, Fish Wildlife and Parks**, replied the bill would require FWP to talk with the landowner about the fishery values. He said it will still be up to the landowner whether they want to include fishing in the easement. The FWP is not required to make the fishery into the easement. FWP is required to discuss and evaluate with the landowner if the stream is valuable or not.

SENATOR BECK asked what is the value of the bill to the FWP and to the landowner. **Mr. Olsen** said the FWP evaluates streams in several cases. The bill mandates the FWP to discuss the streams.

SENATOR TAYLOR said some agencies don't look at the easements unless they have direction. Easements are important economically to the person selling the property or using it as an easement, to the fisherman and for the people buying licenses. He thinks there are some cases where the FWP has not evaluated the fishing value.

SENATOR BECK said if the FWP is going to buy an easement, they are going to include everything in it which is pertinent to the property of the easement. He does not see the need for the bill.

Vote: Motion failed 5-7 with Doherty, Ellingson, Franklin, Taylor and Mesaros voting aye.

Motion/Vote: SEN. BECK moved that HB 344 BE TABLED. Motion carried 7-5 with Doherty, Ellingson, Franklin, Wells and Taylor voting no.

{Tape : 1; Side : A; Approx. Time Counter : 8.8}

EXECUTIVE ACTION ON HB 379

Leanne Kurtz explained amendment.

Motion/Vote: SEN. MCCARTHY moved that the AMENDMENT BE ADOPTED. Motion carried unanimously.

SENATOR BECK said the MT Audubon Society asked for an amendment.

Leanne Kurtz said she was not asked to draft an amendment for them.

SENATOR DOHERTY said the amendment proposed by the MT Audubon recognized the Montana Endangered list. They wanted the Endangered Species List be recognized in this act. **SENATOR MCCARTHY** said they wanted to make sure the committee understood.

SENATOR MESAROS noted it was not requested by any member of the committee to forward the amendment.

SENATOR BECK said the amendment is to include the MT Endangered Species List. He asked FWP if there is anything in the amendment which would come back to the legislature. **Arnie Olsen** replied FWP would not have any trouble with the amendment. He does not think there is anything harmful associated with the amendment. **SENATOR BECK** asked if FWP already monitor the MT Endangered Species List. **Mr. Olsen** said FWP has to by law. **SENATOR BECK** said the amendment would be redundant if put in the bill. **Mr. Olsen** replied it would be up to the committee to decide.

SENATOR FRANKLIN said if the amendment does not make any significant difference to the bill, the committee should propose the MT Audubon amendment to include the MT Endangered Species Act. **Leanne Kurtz** explained the amendment inserts the statute

for the Endangered Species Act with the Federal Endangered Species Act.

SENATOR FRANKLIN asked if the amendment hampered the work of the FWP or would the amendment make it difficult for the FWP. **Bob Lane, Chief Legal Council for FWP**, does not think the amendment will cause any problems for the department. The amendment makes the statute more complete.

Motion/Vote: SEN. FRANKLIN moved that MT AUDUBON AMENDMENT BE ADOPTED. Motion carried 11-1 with Swysgood voting no.

Motion/Vote: SEN. MCCARTHY moved that HB 379 BE CONCURRED IN AS AMENDED. Motion carried 11-1 with Swysgood voting no.

{Tape : 1; Side : A; Approx. Time Counter : 16.1}

HEARING ON HB 435

Sponsor: REPRESENTATIVE PAUL CLARK, HD 72, Trout Creek

Proponents: Arnie Olsen, Fish Wildlife and Parks
Scott Birkenbuel, Self
Jean Johnson, MT Outfitter's and Guide's Assoc.

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE PAUL CLARK, HD 72, Trout Creek, said HB 435 gives the Fish and Game Commission the authority to adopt special rules. He said the bill does not give the Commission authority to do anything it does not already do for the youth of Montana. He stated the bill was brought to him by a recreational group called Access Montana Outdoors. He explained what the bill would do.

Proponents' Testimony:

Arnie Olsen, Fish Wildlife and Parks, entered written testimony, **EXHIBIT**(fis53a03).

Scott Birkenbuel, Access Montana Outdoors, said the bill will be a great advantage for the disabled community. The bill will also

give the authority to the Commission where they can deal with issues about disabled hunting on a policy level, rather, than having the issues go through the legislature.

Jean Johnson, MT Outfitter's and Guide's Association, said the association would recommend the committee to consider amending the effective date so the bill becomes effective immediately upon passage and approval. The Commission would have the possibility of adopting rules throughout the summer and fall months towards a late season hunt.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR BECK said he has a constituent in his district who lost a limb. The individual asked him if they could allow crossbows during bow season. He asked if the sponsor would object to the idea of it being worked into the bill. **REPRESENTATIVE CLARK** thought the issue goes beyond the scope of the bill. He said he would not object to considering it as a separate issue but does not think it belongs in the bill.

SENATOR WELLS read from the bill which said the Commission could adopt rules to address the issue. **SENATOR BECK** said a person with disabilities emphasizing the possibility of a crossbow for a person with only one limb.

SENATOR WELLS read line 27 from the bill. He said it seems to him the Commission can make special rules to allow people with disabilities to use crossbows.

SENATOR SWYSGOOD asked what is the need for the bill. **Arnie Olsen** said there are statutes which give privileges to the disabled. He said there are 50 antelope licenses available for the disabled. They can go anywhere and use them. He said to his knowledge the FWP does not have the authority to set up a crossbow season in one district for the disabled. The bill gives them the authority.

SENATOR WELLS asked why was the word "shall" was changed or added from line 13 and inserted the word "must" in line 20.

REPRESENTATIVE CLARK said it was used to clean up the language of the bill and to make it easier to understand. He commented on the question about crossbows. He said he would not like to have the crossbow issue in the bill. He said it would make the bill extremely controversial.

SENATOR FRANKLIN said if the Commission was going to adopt rules, that is when the hearing would occur with the crossbow community.

Closing by Sponsor:

REPRESENTATIVE PAUL CLARK, HD 72, Trout Creek, said the bill adds preference for disabilities. The bill gives the Commission the ability to give special consideration to youth.

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HEARING ON HB 488

Sponsor: **REPRESENTATIVE DOUGLAS WAGNER, HD 83, Hungry Horse**

Proponents: None.

Opponents: **Bud Clinch, Dept. of Natural Resource and Conservation**
Roy Andes, Mon TRUST
Candace Payne, Women Involved in Farm Economics
John Youngberg, MT Farm Bureau
Arla Jean Murray, MT Cattle Women
John Mundinger, MT Stockgrower's Association
Page Dringman, MT Landowner's Alliance

Opening Statement by Sponsor:

REPRESENTATIVE DOUGLAS WAGNER, HD 83, Hungry Horse said HB 488 authorizes the citizens of Montana to vote in the November election whether or not to amend the Constitution of Montana. They will vote to decide whether or not to allow residents of Montana to be charged a recreational access fee to state lands. He commented on state land access across Montana. He said the bill will take \$271,000 a year from the School Trust. He does not think the money being taken from the Trust will be a big hit to the School Funding.

Proponents' Testimony: None.

Opponents' Testimony:

Bud Clinch, DNRC, said the School Trust Lands were granted to the state in the Enabling Act in 1889. He commented on land in both western and eastern Montana. He opposed HB 488 for two reasons. One reason is the economic consequences. The second reason is the legal consequences. He discussed both consequences

of the bill. He said the bill proposed to exempt Montana residents for paying the fee.

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Bud Clinch, continued. He read a section of the Enabling Act which discussed the transfer of land to the State of Montana.

SENATOR TAYLOR took over the Chair.

Roy Andes, Montanans for Responsible Use of the School Trust, said Mon Trust is a grassroots organization dedicated to preserving, defending, and watch-dogging the use of management of the School Trust for its sole beneficiaries. He said the bill does not amend the Enabling Act of 1889. He explained the history of the State Trust lands. He entered and read the Proposition No. 35, **EXHIBIT (fis53a04)**. He explained the history of Proposition No. 35. He said recreational use of Trust Lands is a breach of trust.

Mr. Andes told a story of Earl Shafsberry of England in 1802. He commented on a case in the Montana Supreme Court on the School Trust. He stated the State of Montana is breeching a pledge made 110 years ago by enacting the bill. He said a way to reduce the administrative burden and eliminate the problem of collection fees would be to pay an additional fee to the conservation license. He said the additional fee would raise money for the School Trust. The organization would be willing to work on the proposal of an additional fee to the conservation license. He said the proposal would eliminate the Constitutional problem, eliminate the need for amending the Constitution, and eliminate the problem conflicting with the Enabling Act.

Candace Payne, WIFE, said the organization supports the continuation of the State School Trust Land use fee for all users including recreational users. She remarked everyone who uses the State School Trust Land needs to recognize Section 16 and Section 36 of each township in Montana was set aside for the support of the common schools. She said forestry, ranching, farming and mining pay for the privilege of using the State School Trust Land. Recreationists should not be exempt.

John Youngberg, MT Farm Bureau, said if the bill would be put on the ballot, the public will only hear it reduces the cost for recreating on State Lands. He said the public will not hear anything about reducing the money for the State Trust or about breaking the Constitution. He commented on a study of what the public pays for Public Lands.

Arla Jean Murray, MT Cattle Women, said the organization opposes the bill.

John Munding, MT Stockgrower's Association, thought it would be inappropriate for the legislature to go back and undo a deal which has been ratified.

Page Dringman, MT Landowner's Alliance, urged the opposition of the bill. She does not think it is fair that recreational use is subsidized at the expense of the other users of state land. She said the state should optimize the value of our State Trust Lands.

{Tape : 1; Side : B; Approx. Time Counter : 19.2}

Questions from Committee Members and Responses:

SENATOR FRANKLIN said there was reference to a potential loss of revenue. She did not see a Fiscal Note for either the revenue impact or for the cost of the Constitutional initiative.

REPRESENTATIVE WAGNER replied there was no fiscal note required for the bill. It was no request by the Speaker of the House nor from the Floor debate. **SENATOR FRANKLIN** said the concern would be that there would be some fiscal impact. She did not know if the Senate should request a fiscal note but it should be looked into.

SENATOR BECK asked if there was as much opposition in the House as in the hearing. **REPRESENTATIVE WAGNER** replied no. He didn't request anybody to testify in favor of the bill. There was one opponent in the House.

SENATOR BECK said originally when the fee was put on, he thought it was an administrative fee for the department to use state lands as recreational. He understands now there is a portion going into the Trust Fund. **Bud Clinch** replied the original compromise was a \$5 license. He said of the \$5, \$3 went to the trust. **Jeff Hagner** said 50¢ a license agent commission, and \$1.50 for administration of the program to include the weed damage compensation. **Mr. Clinch** said the original request was for hunting and fishing on State Land. He said it was two years later when the sportsmen petitioned the Land Board to expand for camping, hiking, bird watching. He said an Advisory Council and an Advisory Committee was established to look at agriculture and grazing. The Land Board established a \$10 fee for residents.

SENATOR SWYSGOOD asked why wouldn't a resident pay for the \$10 permit. **REPRESENTATIVE WAGNER** replied the problem is since Montana became a state it was not required to have access to the

state land until 1991. He said they can buy a permit but it hasn't been strictly enforced by FWP in the past. **SENATOR SWYSGOOD** said the county he represents has more State Land than others in the state. He was familiar with the hassles that were brought about in 1991. He said there were out-of-state landowners who locked up their private land but also the state land. He commented about the controversy over the issue in his district. He said the land is not public land, they are trust lands. He said the users of the state land should have to pay a fee to use the land. He thinks the system has been good and should stay in place. **REPRESENTATIVE WAGNER** said in his estimation the Constitution refers to the public lands to be held in trust by the school children. He said the Constitution states they are public lands.

SENATOR CRISMORE said the recreation rights on the land do not have a monetary value. **REPRESENTATIVE WAGNER** replied the right to recreate in the State of Montana is priceless. He does think there should be a price. He said when recreating there is no profit being made off of the state land.

SENATOR CRISMORE said he goes to his cabin, which is leased, to recreate. He asked if they should charge for cabin leases. He asked if they should charge anybody as long as it is for recreation. **REPRESENTATIVE WAGNER** said he does not think people should be charged as much as they are paying. They are improvements on the land for the cabins and should be charged for the improvements.

SENATOR WELLS asked what are the chances of the fees continuing to climb when similar lands are being leased out for substantially higher prices. **Bud Clinch** replied unless there is a Land Board that elects to change that or attempts to amend the statute, they are safe where they are. He said the question might be if this bill or a similar bill passed then there is an opportunity to sell the rights. He said the process in place is the best assurance the lands will stay open for public recreation.

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SENATOR BECK asked if the bill was passed would Mr. Andes challenge the bill in court. **Roy Andes** replied they have not consulted on the issue. He said the bill would be very vulnerable. **SENATOR BECK** said it appeared to him the state is going to charge out-of-state residents and not charge in-state residents. He does not know how it would hold up in court. **Roy Andes** replied that's good advice.

SENATOR TAYLOR asked how much money the state has spent in fees for weed management on state land. **Jeff Hagner** said they do weed control on their own. He said it comes out of their own cost because they are using their own people.

Closing by Sponsor:

REPRESENTATIVE DOUGLAS WAGNER, HD 83, Hungry Horse, said he does not think it is a Constitutional violation not to charge for recreational use for state lands. He said there was a study done which showed the fee for recreational use should be \$25. He said the Land Board reduced it to \$5 and then double it to \$10. He commented on the last legislative session when the bill was attempted to be addressed.

REPRESENTATIVE WAGNER referred to the comment that the public would only hear the reduced fee to recreate on state land. He said the arguments and concerns are published in the voters' information pamphlet. He commented on the money being made from the recreational use.

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REPRESENTATIVE WAGNER continue. He commented on the hearing and committee reports in 1991. He said they are not going to charge for recreational use on state lands. He said they are going to continue to manage the trust just not put a price or fee on it. He said he is trying to get a better working relationship between sportsmen, recreationists and landowners. He commented on SB 171 which was sponsored by Senator Mesaros.

SENATOR MESAROS resumed the Chair.

HEARING ON HB 533

Sponsor: **REPRESENTATIVE STEVEN GALLUS, HD 35, Butte**

Proponents: **Van Jamison, MT Wildlife Federation**
Jerry Wells, Trout Unlimited

Opponents: **Arnie Olsen, FWP**

Opening Statement by Sponsor:

REPRESENTATIVE STEVEN GALLUS, HD 35, Butte, said HB 533 provides a youth conservation sportsman's license which is similar to one

which can be purchased as an adult. He said the license has various tags such as deer tag, an elk tag, a fishing license and conservation license. The price would be \$10 for anyone under the age of 18. He commented on his childhood and hunting. He noted there is a trend where youth are not participating in hunting and fishing. The bill is an incentive to hunt and fish for the youth.

Proponents' Testimony:

Van Jamison, MT Wildlife Federation, said the federation supports HB 533. He said license sales have been declining over several years and license revenues are down. He commented on an article in the *Independent Record* suggested a factor for the decline is that young people are not engaging in outdoor recreation. The federation likes to see the traditions in Montana continue. The bill provides two choices to young people. They can buy a conservation license which will enable them to fish and hunt upland birds for \$4. He said or they can buy a youth sportsman's license which will entitle them to all the same privileges that an adult sportsman's license without the bear tag. He said other recreational activities provide discounts for youth in hope of when they become adults they will be full paying members.

Jerry Wells, Trout Unlimited, said they believe strongly in trying to bring up young people in a fishing environment. HB 533 fits in well with Trout Unlimited's beliefs in terms of teaching children to fish.

Opponents' Testimony:

Arnie Olsen, FWP, provided written testimony, **EXHIBIT(fis53a05)**.

Questions from Committee Members and Responses:

SENATOR WELLS said the FWP does not think HB 533 would have a great impact on the increased number of youth out hunting and fishing. He asked if the price of the hunting license is going to make a difference to teenagers. **REPRESENTATIVE GALLUS** replied yes he does. He said the reason teenagers are spending their money in the mall is because things are hip and cool to them. He said if he can do something to provide an incentive to reverse the trend, he is willing to try it. Studies show when teenagers become adults they will be just, fair, ethical and abide by laws. **SENATOR WELLS** asked what is his opinion of the recommended amendments by the FWP where the department provide sportsmen's license but is not quite the fiscal impact. **REPRESENTATIVE GALLUS** said he will answer his question in his closing.

SENATOR BISHOP commented on all the money it takes to outfit a child to go hunting. He asked if a child could not afford to pay for a license. He asked Representative Gallus to comment.

REPRESENTATIVE GALLUS replied when he was growing up in high school he didn't drive around in a \$15,000 truck. He wore old clothes. He didn't go down to a sporting store and buy the most expensive equipment. He said he is trying to provide an incentive for children who probably can't afford it.

SENATOR FRANKLIN said Senator Wells' point was well taken. She said recreation is a barrier for the public who are having economic troubles. **REPRESENTATIVE GALLUS** said there is a significant portion for which it is a barrier. He said it would cost \$54 if each tag was purchased separately.

Closing by Sponsor:

REPRESENTATIVE STEVEN GALLUS, HD 35, Butte, replied to Senator Well's question on the fiscal impact. He said he didn't sign the note because he didn't agree with it. He said if the bill works and more people do it, then it will affect the fiscal note significantly. He stated it is an investment for the department. He said it will encourage revenue and increase involvement. He commented on the FWP budget. He thinks the future of the state's hunting heritage can depend on this type of legislation or can depend on a \$50 video game. He would rather provide an opportunity and an incentive for kids to hunt and fish in Montana.

ADJOURNMENT

Adjournment: 5:10 P.M.

SEN. KEN MESAROS, Chairman

ADRIENNE PILLATZKE, Secretary

KM/AP

EXHIBIT (fis53aad)